

Recording requested by
and when recorded mail to:

AMERICAN LAND CONSERVANCY
1388 Sutter Street, Suite 810
San Francisco, CA 94109
Attention: Ms. Harriet Burgess

(Space above line for Recorder's use only.)

**DEED OF CONSERVATION EASEMENT
AND AGREEMENT CONCERNING EASEMENT RIGHTS**

This Deed of Conservation Easement and Agreement Concerning Easement Rights (the "Conservation Easement") is granted on this _____ day of _____, 2004, by HEARST HOLDINGS, INC., a Delaware corporation ("Grantor"), to AMERICAN LAND CONSERVANCY, a California nonprofit public benefit corporation ("Grantee"), hereinafter collectively referred to as the "Parties".

RECITALS

A. Grantor is the sole owner in fee simple of certain real property consisting of approximately Eighty-One Thousand Seven Hundred Seventy-Seven (81,777) acres, located in San Luis Obispo County, California, described in "Exhibit A" attached hereto and incorporated herein by this reference (the "Ranch"). Grantor desires to grant to Grantee a conservation easement over a portion of the Ranch located on the west side of Highway 1, as more particularly described in "Exhibit B" attached hereto and incorporated herein by this reference (the "Old San Simeon Village ("OSSV") Easement Area"), and illustrated in "Exhibit C" attached hereto and incorporated herein by this reference (the "OSSV Easement Area Map"). The OSSV Easement Area consists of approximately Ninety-Four (94) acres of land, together with any improvements located within the OSSV Easement Area. ***[Review Note: Legal Descriptions not attached.]***

B. This Conservation Easement is being granted in connection with other conservation transactions collectively affecting the entirety of the Ranch. Through this combination of conservation transactions, the entirety of the Ranch is being conserved in perpetuity as governed by the terms of the respective conservation transactions.

C. Grantee is a “qualified organization” as defined by Section 170(h)(3) of the U.S. Internal Revenue Code and is eligible to hold this Conservation Easement pursuant to Section 815.3 of the California Civil Code. As certified by resolution of its governing body, Grantee accepts the responsibility of monitoring and enforcing the terms of this Conservation Easement.

D. The Parties intend that American Land Conservancy hold the Conservation Easement on an interim basis pending the designation of a successor qualified organization.

E. The grant of this Conservation Easement, including Grantor’s exercise of rights retained in the Conservation Easement, will further the purposes of several governmental conservation policies, including:

Section 815 of the California Civil Code, in which the California Legislature has declared: (1) that “the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California”; and (2) that it is “in the public interest of this state to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations”;

Section 51220 of the California Government Code, in which the California Legislature has declared that “in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands . . . constitutes an important physical, social, esthetic, and economic asset to existing or pending urban or metropolitan developments”;

Section 30251 of the California Public Resources Code provides that the “scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance”;

The San Luis Obispo County Board of Supervisors endorsement resolution, dated January 7, 2003, which declares that “Hearst Ranch represents one of the most significant conservation opportunities in the nation—nearly 128 square miles of rugged shorelines, rolling grasslands, craggy peaks and classic California working cattle ranch landscape”; and

The Coastal Plan Policies in the certified San Luis Obispo County Local Coastal Program call for protection of visual and scenic resources, maintaining agricultural land for agricultural production and protecting environmentally sensitive habitats.

F. The OSSV Easement Area possesses extraordinary scenic and historic values (collectively, the “Conservation Values”) that are of great importance to Grantor,

Grantee, the people of the County of San Luis Obispo and the State of California, and visitors from across the United States of America. The Conservation Values include the following: ***[Review Note: The Parties are preparing a description of the scenic and historic setting that comprises the Conservation Values.]***

G. The Conservation Values of the OSSV Easement Area, and its current uses and existing state of improvement, are described in a "Baseline Conditions Report" dated _____, consisting of maps, photographs, and other documents, and acknowledged by both Grantor and Grantee to be complete and accurate as of the date of this Conservation Easement. Both Grantor and Grantee have copies of the Baseline Conditions Report. It will be used by the Grantor and Grantee as a resource tool to evaluate changes in the conditions and uses of the OSSV Easement Area in relation to the condition and uses of the OSSV Easement Area as of the date of this Conservation Easement. The Baseline Conditions Report, however, is not intended to preclude the use of other evidence to establish the condition of the OSSV Easement Area as of the date of the conveyance of the Conservation Easement if there is a controversy over its then-existing condition, nor is this report to be used to change or interfere with Grantor's retained rights under the Conservation Easement.

DEED AND AGREEMENT

In consideration of the recitals set forth above, and of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants and conveys to Grantee, its permitted successors and assigns, and Grantee hereby accepts, a perpetual "conservation easement" as defined by Section 815.1 of the Conservation Easement Act of 1979 (California Civil Code, Section 815 et seq.), of the nature and character described in this Conservation Easement over the OSSV Easement Area.

1. **Conservation Purpose.** The purpose of this Conservation Easement is to assure that any further development of the OSSV Easement Area will be limited to that which is compatible with the historic architectural vision set forth in the "Julia Morgan Plans" included as "Exhibit D" hereto and incorporated herein by this reference, and, consistent with such protection of the historic character of the OSSV Easement Area and of the other Conservation Values, to limit the uses of the OSSV Easement Area to compatible visitor-serving commercial uses and public access for outdoor passive recreation and scenic enjoyment (the "Conservation Purpose"). Consistent with the requirements set forth in Treasury Regulations §§ 1.170A-14(e)(1)-(2), no use or activity shall be permitted that would impair Conservation Values as protected by this Conservation Purpose. The Parties agree that Grantor's retention of certain rights specified in this Conservation Easement, including specified agricultural, commercial, and recreational uses, is consistent with the Conservation Purpose. As used in this Conservation Easement, the term "impair Conservation Values" means substantially reduce Conservation Values for more than a transient period.

2. **Prohibited Acts.** Grantor promises that it will not perform, or knowingly allow others to perform, any activity or use on the OSSV Easement Area in conflict with the covenants set out in this Conservation Easement. Grantor authorizes Grantee to enforce these covenants. Nothing in this Conservation Easement shall require Grantor to take any action to restore the condition of the OSSV Easement Area caused by (i) elements of nature, which include, without limitation, fire, climatic change, flood, storm, earth movement, or natural evolutionary changes in the condition of the OSSV Easement Area from that described in the Baseline Conditions Report; (ii) any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the OSSV Easement Area or to any person resulting from such causes; or (iii) the non-permitted acts of unrelated third parties so long as Grantor has taken reasonable steps to control such acts. Grantor understands and agrees that nothing in this Conservation Easement relieves it of any obligation or restriction in relation to the use of the OSSV Easement Area imposed by law, including but not limited to local land use restrictions.

3. **Reserved Use Rights.** Except as otherwise expressly provided in this Conservation Easement, Grantor's uses of the OSSV Easement Area shall be limited to the retained use rights described in this Section 3. Grantor retains the right to undertake the development of the OSSV Historic Conservation Project, as described in Section 5 below ("OSSV Project"), including the right to seek regulatory approvals therefor. In addition, Grantor retains the right, subject to the restrictions on structures set forth in Section 5, below, to engage in any use of the OSSV Easement Area identified as a "principally permitted use," an "allowed use," or a "special use" in the Coastal Agricultural land use designation under the Applicable Rules (as defined in Section 29 below); *provided*, no such use of the OSSV Easement Area shall be allowed to impair Conservation Values. ***[Review Note: Define land use terms (per "Applicable Rules") that are consistent with the same terms used in the East Side Conservation Easement, except that retained rights in OSSV will allow uses not allowed in the Agriculture designation, and also not currently allowed in the visitor serving zoning for the property (such as overnight accommodations) solely to allow the undertaking of the OSSV Project.]***

4. **Public Access.**

(a) Dedication of Public Access. Public access shall be allowed, including a continuous segment of the California Coastal Trail, consistent with the parameters set forth in "Exhibit F" attached hereto and incorporated herein by this reference ("Access Parameters"), and subject to the requirement that Grantee complete a comprehensive Public Access Plan pursuant to Subsection 4(c) below.

(b) No Implied Dedication of Public Access. Except as expressly provided in Subsection 4(a) above, nothing contained in this Conservation Easement shall be deemed to be a dedication of any portion of the OSSV Easement Area for use by the general public.

(c) Public Access Plan Process. Within _____ ***[time period]*** after the Effective Date, Grantee shall prepare for Grantor's review and approval a comprehensive Public Access Plan consistent with the Access Parameters. ***[Review Note: Further define post closing public access plan process as well as coordination with Grantor's preparation of resource management plan (Section 8). Also further define Access Parameters prior to closing.]***

5. **Buildings, Facilities and Other Structures.** The installation, construction, reconstruction, replacement, operation or maintenance of any building, facility or structure of any type is prohibited throughout the OSSV Easement Area except as such is permitted in accordance with the provisions of this Section 5. No installation, construction, reconstruction, replacement, operation or maintenance of any building, facility or structure of any type shall be allowed to impair Conservation Values; *provided*, that the development of the OSSV Project, or any integral element thereof, shall not be deemed to impair Conservation Values. ***[Review Note: Existing Buildings, Facilities, and Other Structures will be inventoried in the Baseline Conditions Report, including classification of such facilities as fitting within which categories described below.]***

(a) Existing Structures. Grantor may repair and replace, at its existing location, with a like structure of like size, any structure, whether residential or non-residential, the use of which is authorized by Section 3 above, existing in the OSSV Easement Area on the Effective Date ("Existing Structure") without prior approval from Grantee.

(b) Incidental Ranch Facilities. "Incidental Ranch Facilities" means fences, squeezes, loading chutes, holding fields, corrals, utilities (including gas, electrical and telecommunications), sewage disposal facilities and systems, and water distribution and irrigation facilities within the OSSV Easement Area supporting uses of, or activities on, the OSSV Easement Area authorized by this Conservation Easement. Grantor may repair and replace, with like facilities at their existing locations, and remove Incidental Ranch Facilities existing within the OSSV Easement Area on the Effective Date without prior approval from Grantee. Grantee may install, construct, repair and replace Incidental Ranch Facilities not existing on the Effective Date within the OSSV Easement Area, without prior approval from Grantee; *provided*, that any such repair, replacement or construction of new Incidental Ranch Facilities is reasonably related to the permitted uses and activities in the OSSV Easement Area and does not impair Conservation Values.

(c) Temporary Structures. Grantor may use temporary structures for "Temporary Events," as defined in the Applicable Rules, within the OSSV Easement Area.

(d) Old San Simeon Village Historic Conservation Project. Grantor may reuse existing structures, construct new structures of historically compatible design for visitor serving uses, including guest accommodations of no more than 100 new units, and construct roads and parking in the 39-acre development envelope shown on the map in "Exhibit C" attached hereto and incorporated herein by this reference; *provided*, Grantor may reconfigure boundaries for the OSSV Project to meet requirements by local, state or federal agencies during the entitlement process, so long as the envelope remains no more than 39 acres and does not extend outside the limits of the Infrastructure and Reconfiguration Boundary shown on the map in "Exhibit C"; *provided, further*, that the location for all buildings for the OSSV Project shall be within the "Preferred Location of Buildings" shown on "Exhibit C", unless required otherwise by a local, state or federal agency or other reasonable commercial constraints as determined during the entitlement process, and Grantor agrees to use best efforts to limit the location of such buildings to such area. Support utility infrastructure (including water, electrical distribution, sewage treatment system, and distribution pipelines) for the OSSV Project ("Support Utility Infrastructure") can be located in the 39-acre envelope. Support Utility Infrastructure can also be located within the Infrastructure and Reconfiguration Boundary so long as it does not impair Conservation Values. The architecture, scale, colors, and massing for any new development for the OSSV Project shall be consistent with the Julia Morgan Plans for such development, as shown in "Exhibit D."

(e) Public Access Facilities. Grantee may construct segments of the California Coastal Trail and such other public access facilities as are authorized in the Public Access Plan.

(f) Signs. Directional signage, signs denoting allowable business uses within the OSSV Easement Area, signs describing other Grantor permitted activities within the OSSV Easement Area and signs used to control unauthorized entry or use of the OSSV Easement Area are permitted. Grantee may install and maintain, at Grantee's sole cost and expense, signage within the OSSV Easement Area to indicate the participation of Grantee, the California Rangeland Trust, Grantor, and of any of Grantee's public or private funding sources in the acquisition and maintenance of the Conservation Easement; *provided*, that the size, location, number, text and design of any such sign shall be subject to the reasonable approval of Grantor, *provided further*, that Grantor agrees that the standard logo of the California Rangeland Trust, Grantee, and each agency of the State of California that has provided funding for Grantee's acquisition of the Conservation Easement, can be included on any such sign.

6. **Subdivision.** Grantor shall not separately sell, transfer or subdivide any portion of the OSSV Easement Area, including existing parcels for which certificates of compliance have been issued, separate from the balance of the OSSV Easement Area. ***[Review Note: Need to provide for creating one or more new parcels within the OSSV Easement Area.]***

7. **Development Rights.** Grantor hereby grants to Grantee all development rights, except retained development rights reserved to Grantor herein, that are now or hereafter allocated to, implied, reserved or inherent in the OSSV Easement Area, and the Parties agree that such development rights are terminated and extinguished. Except as specifically provided herein, the OSSV Easement Area may not be used for the purpose of calculating permissible development or lot yield of any other property.

8. **Resource Stewardship.**

[Review Note: We contemplate that there will be coordinated management planning on the east and west sides, but have not attempted specific tie-in language in this draft.]

(a) Range Management. Any ranching operations on the OSSV Easement Area shall be conducted in accordance with the Interim Management Criteria referenced in Subsection 8(c), below, until completion of the Management Plan prepared pursuant to Subsection 8(c), below, after which all such operations shall be conducted in accordance with the Management Plan. The Management Plan shall address appropriate management practices as hereinafter described for soil and water conservation, erosion control, pest management, nutrient management, water quality and habitat protection on the portions of the OSSV Easement Area used for range operations. Grantor and Grantee recognize that changes in economic conditions, in weather cycles, in grazing technologies, and in conservation practices may dictate an evolution and adaptation in the management of the range resources of the OSSV Easement Area, consistent with the Conservation Purpose. The prescriptions for the management of range resources shall include, but not be limited to: (1) reasonable controls on the active introduction and spread caused by Grantor, or any of Grantor's lessees, licensees or permittees, of non-native exotic invasive plant species; (2) reasonable residual dry matter requirements, which shall vary according to slope, soil and precipitation conditions; and (3) reasonable practices which serve to balance continued agricultural uses with the protection of water quality and riparian habitat within the OSSV Easement Area.

(b) Woodland Protection. Any and all tree cutting on the OSSV Easement Area shall be limited to such cutting as is reasonably necessary to control insects and disease, to prevent personal injury and property damage, to salvage dead or dying trees, for fuel load management, and to reasonably accommodate allowed land uses under Grantor's retained rights. Any wood salvaged in connection with such authorized tree cutting, and any downed wood, may be removed from the OSSV Easement Area or used within the OSSV Easement Area for authorized uses including firewood, other domestic or agricultural uses, and other Grantor retained rights within the OSSV Easement Area, including construction and repair of permitted buildings, structures, trails, roads and fences.

(c) Planning and Consultations. Within one year after the Effective Date, Grantor shall submit a written management plan ("Management Plan") for Grantee's review and approval, which shall set forth an overview of the range resource management practices that Grantor intends to undertake. Grantor shall consult with Grantee in the course of Grantor's development of the Management Plan. Pending the completion and Grantee's approval of the Management Plan, Grantor shall manage any grazing conducted on the OSSV Easement Area in accordance with the provisions of the interim standards set forth in "Exhibit E" attached hereto and incorporated herein by reference ("Interim Management Criteria"). The only basis for which Grantee may refuse to approve the Management Plan shall be Grantee's determination that the Management Plan is inconsistent with this Conservation Easement. In connection with Grantee's annual monitoring, Grantor and Grantee are encouraged to cooperatively review the effectiveness of Grantor's ongoing management practices in achieving the Conservation Purpose and to identify any adjustments and/or corresponding Management Plan modifications for Grantor's consideration.

9. **Mining.** Exploration for, or the removal or extraction of any mineral or non-mineral substance by any surface or subsurface mining or extraction method conducted within the OSSV Easement Area is prohibited.

10. **Road Construction.** Any road existing on the Effective Date and any new road approved and constructed as hereinafter provided, may be maintained, repaved, and rebuilt on the original alignment at Grantor's discretion without having to seek permission from Grantee. Existing roads are shown in the Baseline Conditions Report. Any new or relocated road may be constructed only with Grantee's advance written permission, which shall be provided upon Grantor's demonstration that the design and location of the proposed new road or relocated support permitted uses and activities in the OSSV Easement Area and will not impair Conservation Values; *provided*, that, in the case of a new or improved road required by any regulatory agency or reasonably necessary in order for Grantor to exercise a right retained by Grantor under this Conservation Easement, Grantee shall approve the proposed new road or a reasonable alternative route. No road on the OSSV Easement Area that is unpaved on the Effective Date shall subsequently be paved without Grantee's advance written permission, which shall be provided upon Grantor's demonstration in accordance with the preceding requirements. Unpaved roads existing on the Effective Date may be relocated as unpaved roads as required by agricultural operations or other permitted activities or uses in the OSSV Easement Area; *provided*, that each abandoned road must be returned to agriculture or a natural condition. For purposes of this Section 10, "pave", "paved", or "paving" shall include any impermeable covering of the soil surface, including, but not limited to, concrete and asphalt. To the extent reasonably necessary, Grantor may apply a reasonable amount of gravel or red rock material, or other permeable surface to provide an all-weather surface for roads in the OSSV Easement Area, and such all-weather surfacing shall not be considered paving.

11. **Storage/Disposal.** Permanent storing, dumping, or otherwise disposing of non-compostable refuse or trash is prohibited. The storage of abandoned automobiles, trucks, machinery, and equipment is prohibited. The release, storage, or disposal of any Hazardous Substance (as defined in Section 21 hereof) on or within the OSSV Easement Area is prohibited, except that herbicides, pesticides and other biocides utilized on the OSSV Easement Area in accordance with Section 8 above, and gasoline and diesel fuel utilized in the authorized agricultural operations or in conjunction with the OSSV Project, may be stored on the OSSV Easement Area; *provided* that all such utilization and storage shall be in compliance with applicable health, safety, and Environmental Laws (as defined in Section 21 hereof). Grantor shall promptly provide Grantee with a copy of any written notice received by Grantor of any government or other third-party action based on asserted non-compliance with any such applicable legal requirement or based on any release or disposal of any Hazardous Substance within the OSSV Easement Area. This provision shall not affect Grantor's right to temporarily store materials for periods less than one hundred eighty (180) days; *provided*, that any such storage is in compliance with all applicable laws and regulations; *and provided, further*, that such storage shall not be allowed to impair Conservation Values.

12. **Water Rights.** Grantor shall retain, maintain and preserve the right to develop and use all water and water rights associated with the OSSV Easement Area, including the right to utilize water from Ranch sources outside the OSSV Easement Area. Grantor represents that there is water sufficient to sustain present and future agricultural productivity, other retained rights and Conservation Values. Grantor shall not utilize, or authorize others to utilize, water from the OSSV Easement Area outside the OSSV Easement Area.

13. **Rights Retained by Grantor.** Except as expressly restricted or extinguished by the terms and conditions of this Conservation Easement, Grantor retains all ownership rights in the OSSV Easement Area and retains the right to perform any act not prohibited or limited by this Conservation Easement. Grantor's retained rights include, but are not limited to: (a) the right to exclude any member of the public from trespassing on the OSSV Easement Area, subject to the public access provisions of this Conservation Easement; (b) the right to sell, encumber, or otherwise transfer the OSSV Easement Area or portions thereof, subject to the restrictions on subdivision set forth in Section 6, above, to anyone Grantor chooses; (c) the right to defend against actions of eminent domain; (d) the right to grant easements and other third-party authorizations for (i) the facilities and uses authorized in Section 3 and Section 5, above; and (ii) roads authorized pursuant to Section 10; and (e) the right to grant additional conservation easement rights over the OSSV Easement Area, including rights of public access; *provided*, that (i) such additional conservation easement rights shall not conflict with any of Grantee's rights under this Conservation Easement; (ii) such additional conservation rights shall not allow any uses of the OSSV Easement Area that will impair Conservation Values; (iii) Grantee shall be notified in writing at least ninety (90) days in advance of any proposed new grant of conservation easement over any

portion of the OSSV Easement Area, which notice shall include the proposed grant of conservation easement; and (iv) no new grant of conservation easement shall result in Grantee's having to bear any additional obligation or cost under this Conservation Easement. Grantor retains the obligation to assure that all authorized third-party users of the OSSV Easement Area are in compliance with this Conservation Easement.

14. **Responsibilities of Grantor and Grantee Not Affected.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantor as owner of the OSSV Easement Area. Among other things, this shall apply to:

(a) Taxes. Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the OSSV Easement Area, including all improvements thereon, by competent authority, and Grantor shall promptly reimburse Grantee for any tax or assessment on the Conservation Easement that Grantee is required to pay; *provided*, that the preceding provisions shall be interpreted to not obligate Grantor to pay any capital gains tax owed by Grantee as a result of a voluntary or involuntary transfer by Grantee of its interests under this Conservation Easement.

(b) Upkeep and Maintenance. Except as otherwise provided in the Access Parameters or Public Access Plan, Grantee shall have no obligation for the upkeep or maintenance of the OSSV Easement Area unless Grantor and Grantee mutually agree on cooperative programs and cost sharing for specific projects.

(c) Liability and Indemnification.

(1) Grantor shall and hereby agrees to hold harmless, indemnify, protect, and defend Grantee, its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns and each of them (collectively "Grantee Indemnified Parties") from and against all liabilities, penalties, costs, losses, orders, liens, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorneys' and experts' fees, arising from or in any way connected with: (i) any injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the OSSV Easement Area, regardless of cause, except to the extent caused by the negligence or willful misconduct of any of the Grantee Indemnified Parties; (ii) a violation of, or other failure to comply with, any state, federal or local law, regulation or requirement, by Grantor, or any party other than one of the Grantee Indemnified Parties acting upon permission from Grantor, in any way affecting, involving or relating to the OSSV Easement Area, except to the extent caused by the negligence or willful conduct of any of the Grantee Indemnified Parties; or (iii) the breach by Grantor of any of its obligations set forth in this Conservation Easement.

(2) Grantee shall hold harmless, indemnify, and defend Grantor and its officers, directors, employees, contractors, legal representatives, agents, heirs, personal representatives, successors and assigns, and each of them (collectively "Grantor Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims demands, or judgments, including without limitation, reasonable attorneys' and experts' fees, arising from or in any way connected with any injury to or the death of any person, or physical damages to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the OSSV Easement Area to the extent caused by: (i) the negligence or willful misconduct of Grantee Indemnified Parties; or (ii) any member of the public present on the Property in accordance with the limited authorization for public access set forth in Section 4, above. Grantee's indemnity obligation with respect to public access shall not extend to any acts or omissions not expressly authorized pursuant to Section 4 above, including, without limitation, any trespass.

(d) Insurance.

(1) Grantor shall maintain a comprehensive general liability policy insuring against bodily injury and property damage on the OSSV Easement Area in the amount of not less than five million dollars (\$5,000,000), which amount shall be adjusted every five (5) years to reflect the percentage increase during the past five (5) years in the CPI; *provided*, Grantor may self insure to the extent reasonably approved by Grantee. For purposes of this Conservation Easement, "CPI" means the United States Department of Labor's Bureau of Labor Statistics = San Francisco-Oakland-San Jose Area Consumer Price Index for all Urban Consumers (CPI-U, all items) (1982-84=100), or the successor of such index. Grantee shall be named an additional insured on the policy. The liability insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Grantee. Grantor waives all rights of subrogation against Grantee and its agents, representatives, officers, directors and employees for recovery of damages to the extent these damages are covered by insurance maintained pursuant to this Conservation Easement. Grantor shall furnish Grantee with certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Such certificates shall provide for thirty (30) days written notice to Grantee prior to the cancellation or material change of any insurance referred to herein. Any failure of Grantee to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Grantee to identify a deficiency from evidence that is provided shall not be construed as a waiver of Grantor's obligation to maintain such insurance. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Conservation Easement.

(2) Grantee shall maintain a comprehensive general liability policy insuring against bodily injury and property damage on the OSSV Easement Area in the amount of not less than _____dollars (\$_,000,000), which amount shall be adjusted every five (5) years to reflect the percentage increase during the past five (5)

years in the CPI; *provided*, Grantor may self insure to the extent reasonably approved by Grantee. Grantor shall be named an additional insured on the policy. The liability insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Grantor. Grantee waives all rights of subrogation against Grantor and its agents, representatives, officers, directors and employees for recovery of damages to the extent these damages are covered by insurance maintained pursuant to this Conservation Easement. Grantee shall furnish Grantor with certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Such certificates shall provide for thirty (30) days written notice to Grantor prior to the cancellation or material change of any insurance referred to herein. Any failure of Grantor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Grantor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Grantee's obligation to maintain such insurance. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Conservation Easement.

15. OSSV Easement Area Management and Issue Resolution.

(a) Right of Entry. Officers, directors and employees of Grantee, and Grantee's contractors approved by Grantor in Grantor's sole discretion ("Authorized Monitors") shall have the right to enter at least annually with two (2) week's advance notice onto the OSSV Easement Area for purposes of monitoring compliance with the terms of this Easement. Entry shall be by no more than two (2) Authorized Monitors for no more than two (2) days per year for the OSSV Easement Area. When Grantee has provided notice to Grantor of a circumstance that Grantee considers to be a bona-fide violation of the Conservation Easement, entry by such Authorized Monitors for up to an additional two (2) days is allowed with two (2) weeks advance written notice. Any additional entry shall require advance written permission by Grantor. Grantee's monitoring and access activities shall not interfere with normal operations on the OSSV Easement Area. ***[Review Note: The specified access is solely for enforcement monitoring, and does not address management of public access.]***

(b) Issue Resolution. If either Party to this Conservation Easement (the "Non-Defaulting Party") determines that the other Party (the "Defaulting Party") is in violation of any term of this Conservation Easement or that a violation is threatened, the Non-Defaulting Party shall deliver written notice to the Defaulting Party of such violation. Not later than fourteen (14) days after the delivery of such written notice, the Parties shall meet on site with an agreed upon expert ("Consulting Expert") to discuss the circumstances of the asserted violation and to attempt to agree on appropriate corrective action. The Parties shall share equally the costs of retaining the services of the agreed upon Consulting Expert for such discussion; *provided*, if the Parties are unable to agree on the selection of a Consulting Expert, each Party may retain the services of an expert at its own expense. If the Parties are unable to agree on appropriate corrective action, the Non-Defaulting Party shall deliver a further written

notice to the Defaulting Party to demand particular corrective action to cure the violation. The Defaulting Party shall cure the violation within thirty (30) days after receipt of such further notice, or under circumstances where the violation cannot reasonably be cured within such thirty (30) day period, shall commence curing such violation as soon as possible within such thirty (30) day period and shall continue diligently to cure such violation until finally cured.

(c) Judicial Enforcement. If the Defaulting Party fails to cure the violation within thirty (30) days after receipt of the further notice from the Non-Defaulting Party, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the Non-Defaulting Party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement.

(d) Expert Assistance. The opinions of any Consulting Expert jointly engaged to assist the Parties in the resolution of any claim of injury to Conservation Values, shall be admissible in any judicial proceedings conducted with respect to that asserted violation.

(e) Immediate Relief. Notwithstanding any of the foregoing, if at any time an ongoing or imminent violation of the terms of this Conservation Easement could impair Conservation Values of the OSSV Easement Area and there is a showing that irreparable harm would result if Grantee were required to first complete the issue resolution process set forth in Subsections 15(b) and (c), above, Grantee may proceed immediately to seek an injunction to stop the violation, temporarily or permanently. Injunctive relief or other judicial relief will not be allowed to interfere with the rights of Grantor reserved in this Conservation Easement.

(f) Alternative and Cumulative Remedies. The remedies described in this Section 15 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code Section 815, et seq., are incorporated herein by this reference and this Conservation Easement is made subject to all of the rights and remedies set forth therein. The prevailing Party shall be entitled to recover its costs incurred in any such enforcement effort, including reasonable attorneys', consultants' and experts' fees and costs. Notwithstanding the foregoing, to the maximum extent allowed by law, the issue resolution process provided for in Subsections 15(a) – (e) above shall be followed.

16. Forbearance No Waiver. Forbearance by the Grantee or Grantor to exercise its respective rights under this Conservation Easement shall not be construed to be a waiver by the Grantee or Grantor of such term or of any subsequent breach of the same or any other term of this Conservation Easement. No delay or omission in the exercise of any right or remedy by Grantor or Grantee shall impair such right or remedy or be construed as a waiver.

17. Grantee Transfer of Easement.

[Review Note: Recognize: (1) Parties' intention to create a new entity to take assignment of the Conservation Easement; and (2) ALC's right to reserve certain enforcement rights relative to the Old San Simeon Village Project].

(a) Subject to the obligations and rights of the original Grantee as provided in this Subsection 17(a), in the event that Grantee decides to assign its interest under this Conservation Easement, Grantee shall provide Grantor with written notice of such intention or requirement and shall allow Grantor a period of not less than one hundred twenty (120) days within which to designate an assignee that must be: (1) qualified to hold a conservation easement under Section 815.3 of the California Civil Code; (2) a "qualified organization" as defined in Section 170(h)(3) of the U.S. Internal Revenue Code, 26 U.S.C. 170(h)(3); and (3) willing and financially able to assume all of the responsibilities imposed on Grantee under this Conservation Easement. In the events that (i) Grantor fails to designate an assignee within the specified time, and (ii) Grantee is no longer the American Land Conservancy, and (iii) Grantee is unable or unwilling to extend the time for Grantor's designation of an assignee, then Grantor may designate American Land Conservancy ("ALC") as an interim holder of the Conservation Easement. In the event ALC for any reason does not accept an interim assignment, the one hundred twenty (120) day time period for Grantor to designate an assignee shall be extended so long as Grantor is taking reasonable steps to select an assignee; *provided*, that Grantor shall proceed in accordance with the provisions of Subsection 17(b) if Grantee ceases to exist or no longer qualifies to hold the Conservation Easement under Section 170(h) of the U.S. Internal Revenue Code, or applicable state law. In the event that Grantor is unable or chooses not to designate an assignee in accordance with the foregoing provisions of this Subsection 17(a), Grantee may proceed to assign all, but not less than all, of its rights under this Conservation Easement to any entity that meets all of the foregoing designation criteria after providing Grantor notification of the intended assignee at least forty-five (45) days prior to assignment. Notwithstanding anything in this Subsection 17(a) to the contrary, this Conservation Easement shall not be transferred by Grantee to any governmental entity or public agency without the consent of the Grantor, which consent shall be in Grantor's sole discretion.

(b) If Grantee ever ceases to exist or no longer qualifies to hold this Conservation Easement under Section 170(h) of the U.S. Internal Revenue Code, or applicable state law, Grantor promptly shall petition a court of competent jurisdiction to transfer this Conservation Easement to an organization that meets each of the three qualification criteria specified in Subsection 17(a). The Parties intend that, in the selection of a transferee entity, preference be given to a qualified private non-profit organization of Grantor's choosing with the requisite experience in preserving and protecting the Conservation Values.

18. Grantor Transfer of the OSSV Easement Area.

(a) Notification. Any time the OSSV Easement Area, or any portion thereof, or any interest in any portion thereof, is transferred by Grantor to any third party, the Grantor shall notify the Grantee in writing prior to the transfer, and the deed of conveyance or other transfer instrument shall expressly refer to this Conservation Easement. Failure to notify Grantee or include the required reference to this Conservation Easement in the deed or other transfer instrument shall not affect the continuing validity and enforceability of this Conservation Easement.

(b) Transfer Fee. Except the transfer of the OSSV Easement Area to a public agency or private non-profit land trust, a transfer of the OSSV Easement Area or any portion thereof will result in an additional burden on the monitoring and enforcement responsibilities of Grantee; therefore, in connection with any sale or other transfer of the OSSV Easement Area, or any portion thereof or interest therein (other than a transfer (1) to a public agency or private non-profit land trust, or (2) solely to change the method of holding title by the same party or parties, including but not limited to any affiliate of The Hearst Corporation, or otherwise exempt from a transfer fee as described below) there shall be paid to Grantee by the purchaser or transferee a transfer fee. The amount of the transfer fee shall be equal to .2% of the Land Value, as defined below, of the property transferred. "Land Value" shall be the value established by the San Luis Obispo County Assessor on the date of transfer for the land (not improvements). No transfer fee will be assessed if the transfer is not considered by the San Luis Obispo County Assessor as a change of ownership for property tax assessment purposes.

19. Amendment of Easement. This Conservation Easement may be amended only with the written consent of Grantee and Grantor. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Section 170(h) of the U.S. Internal Revenue Code, California Civil Code Section 815, et seq., and any regulations promulgated in accordance with those statutory provisions. Any such amendment shall also be consistent with California law governing conservation easements and shall not affect the perpetual duration of this Conservation Easement. All amendments shall refer to this Conservation Easement and shall be recorded in the Official Records of San Luis Obispo County.

20. Grantor's Title Warranty; No Prior Conservation Easements. Grantor represents and warrants that Grantor has good fee simple title to the OSSV Easement Area, free from any and all liens or encumbrances except those liens and encumbrances shown in the preliminary title report provided to Grantee or otherwise disclosed to Grantee prior to recordation of this Conservation Easement. Grantor represents and warrants that the OSSV Easement Area is not subject to any other conservation easement.

21. Environmental Provisions.

(a) Grantee Not an Owner, Operator, Or Responsible Party.

(1) Notwithstanding any other provision herein to the contrary, the Parties do not intend this Conservation Easement to be construed such that it creates in or gives the Grantee:

(i) the obligations or liability of an "owner" or "operator" as those words are defined and used in Environmental Laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC § 9601 *et seq.* and hereinafter "CERCLA");

(ii) the obligations or liability of a person described in 42 USC § 9607(a)(3) or (4);

(iii) the obligations of a responsible person under any applicable Environmental Laws, as defined below;

(iv) the right to investigate and remediate any Hazardous Substances, as defined below, associated with the OSSV Easement Area; or

(v) any control over Grantor's ability to investigate, remove, remediate, or otherwise clean up any Hazardous Substances associated with the OSSV Easement Area.

(b) Environmental Liabilities and Indemnification. Grantor and Grantor's successors in interest shall indemnify, protect and defend with counsel acceptable to Grantee, and hold harmless the Grantee Indemnified Parties from and against any claims (including, without limitation, third party claims for personal injury or death, damage to property, or diminution in the value of property), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlements of claims), remedial action, compliance requirements, enforcement and clean-up actions of any kind, interest or losses, attorneys' fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees, and expert fees that arise directly or indirectly from or in connection with: (1) the claimed presence or Release (as defined below) of any Hazardous Substance, affecting the air, soil, surface water or groundwater of or at the OSSV Easement Area; (2) any violation or alleged violation of Environmental Law (as defined below) affecting the OSSV Easement Area, whether occurring prior to or during Grantor's ownership of the OSSV Easement Area and whether caused or permitted by Grantor or any person other than Grantor; or (3) any claim or defense by Grantor or any third party that any of the Grantee Indemnified Parties is liable as an "owner" or "operator" of the OSSV Easement Area under any Environmental Law. The foregoing indemnity obligations shall not apply with respect to any Hazardous Substance released or deposited as a result of action by: (i) the Grantee

Indemnified Parties on or about the OSSV Easement Area; or (ii) any member of the public present on the OSSV Easement Area in accordance with the limited authorization for public access set forth in Section 4, above. Grantee's indemnity obligation with respect to public access shall not extend to any acts or omissions not expressly authorized pursuant to Section 4, including, without limitation, any trespass. The indemnity obligations of any successor in interest of Grantor pursuant to this Subsection 21(b) shall be limited to the portion of the OSSV Easement Area to which the successor takes title. Notwithstanding any statutory limitation otherwise applicable, the indemnity obligations of Grantor to the Grantee Indemnified Parties pursuant to this Subsection 21(b) shall continue after transfer to a successor in interest unless a written request for consent to assignment of such indemnity obligations to a successor in interest is approved by Grantee. In considering any such request, Grantee may take into account the financial capabilities of the successor in interest, without regard to any third party financial assurances. Grantee's consent to such assignment may be denied only if there is a commercially reasonable basis for such denial.

(c) Definitions.

(1) The term "Environmental Law" shall include, but shall not be limited to, each statute named or referred to below, and all rules and regulations there under, and any other local, state and/or federal laws, ordinances, rules, regulations, orders and decrees, whether currently in existence or hereafter enacted, or common law, which govern (i) the existence, cleanup and/or remedy of contamination or pollution on property; (ii) the protection of the environment from soil, air or water contamination or pollution, or from spilled, deposited or otherwise emplaced contamination or pollution; (iii) the emission or discharge of Hazardous Substances into the environment; (iv) the control of Hazardous Substances; or (v) the use, generation, transport, treatment, removal or recovery of Hazardous Substances.

(2) The term "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substance into the environment (including, without limitation, the continuing migration of Hazardous Substances into, onto or through the soil, surface water, or groundwater, and the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Substance), whether or not caused by, contributed to, permitted by, acquiesced to or known to Grantor.

(3) The term "Hazardous Substance" shall mean (i) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which pose a hazard to the OSSV Easement Area or to persons on or about the OSSV Easement Area or cause the OSSV Easement Area to be in violation of any Environmental Law; (ii) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; (iii) any chemical,

material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including CERCLA, 42 USC section 9601, et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 USC section 6901, et seq.; the Hazardous Materials Transportation Act, 49 USC section 1801, et seq.; the Federal Water Pollution Control Act, 33 USC section 1251, et seq.; the California Hazardous Waste Control Law ("HWCL"), Cal. Health & Safety section 25100, et seq., Hazardous Substance Account Act ("HSAA"), Cal. Health & Safety Code section 25300, et seq., the Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), Cal. Water Code section 13000, et seq., the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); Title 22 of the California Code of Regulations, Division 4, Chapter 30; (iv) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the OSSV Easement Area or the owners and/or occupants of property adjacent to or surrounding the OSSV Easement Area, or any other person coming upon the OSSV Easement Area or adjacent property; and (v) any other chemical, materials or substance which may or could pose a hazard to the environment.

22. **Interpretation.** This Conservation Easement shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes. If any provision of this Conservation Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

23. **Captions.** The captions in this Conservation Easement have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

24. **Perpetual Duration.** The easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Conservation Easement that applies to Grantor and Grantee shall also apply to and be binding upon their respective agents, heirs, executors, administrators, successors and assigns.

25. **Notices.** Any notice, demand, request, consent, approval or communication that either Party desires or is required to give to the other shall be in writing and either served personally or sent by United States certified mail, return receipt requested, addressed as follows or such other address as either Party from time to time shall designate by written notice to the other.

**OSSV CONSERVATION EASEMENT
PUBLIC REVIEW DRAFT
07-12-04**

To GRANTOR: HEARST HOLDINGS, INC.
 Attention: Stephen T. Hearst
 Vice President and General Manager
 San Simeon Ranch Division
 5 Third Street, Suite 200
 San Francisco, CA 94103

With copies to: Hearst Holdings, Inc.
 Attention: General Counsel
 959 8th Avenue
 New York, NY 10019

To GRANTEE: AMERICAN LAND CONSERVANCY
 Attention: Ms. Harriet Burgess
 1388 Sutter Street, Suite 810
 San Francisco, CA 94109

26. **Condemnation.** If all or any part of the OSSV Easement Area is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, so as to terminate this Conservation Easement in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their respective interests in the OSSV Easement Area so taken or purchased, and all direct or incidental damages resulting therefrom. If only a portion of the OSSV Easement Area is subject to such exercise of eminent domain, this Conservation Easement shall remain in effect as to all other portions of the OSSV Easement Area.

27. **Extinguishment.** If circumstances arise in the future that render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which Grantee shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the OSSV Easement Area subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by applicable Federal or California law at the time, in accordance with Section 28, below. Grantee shall use any proceeds received under the circumstances described in this paragraph in a manner consistent with its conservation purposes, which are exemplified by this Conservation Easement.

28. **Valuation.** This Conservation Easement constitutes a real property interest immediately vested in Grantee. For the purpose of Section 27, above, the Parties stipulate that this Conservation Easement has a fair market value determined by multiplying (a) the fair market value of the OSSV Easement Area unencumbered by the Conservation Easement (minus any increase in value attributable to improvements made after the date of this Conservation Easement) by (b) the ratio of the value of the

Conservation Easement to the value of the OSSV Easement Area, unencumbered by the Conservation Easement, as of the Effective Date. The values as of the Effective Date shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this Conservation Easement pursuant to Section 170(h) of the U.S. Internal Revenue Code of 1954, as amended. For the purposes of this paragraph, the ratio of the value of the Conservation Easement to the value of the OSSV Easement Area unencumbered by the Conservation Easement shall remain constant.

29. **Laws Currently in Effect.** Except for the term “Applicable Rules”, which is specifically defined below, all references in this Conservation Easement to statutes, regulations and other laws shall be deemed to refer to those statutes, regulations and laws currently in effect, or as amended (or any successor provision then applicable). The term “Applicable Rules” as used in this Conservation Easement is defined as the County and other regulatory requirements applicable to development within the OSSV Easement Area as of the Effective Date. In the event that the existing County and/or other applicable regulatory requirements are changed to become more restrictive, Grantee agrees that Grantor shall retain the right to request exceptions or amendments to such changes from the regulatory agencies such that it can seek permits which comply with the Applicable Rules.

30. **Entire Agreement.** This Conservation Easement sets forth the entire agreement of the Parties with respect to the OSSV Easement Area and supersedes all prior discussions, negotiations, understandings or agreements relating to the OSSV Easement Area, all of which are herein merged.

31. **Counterparts.** The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both Parties; each counterpart shall be deemed an original instrument as against any Party who has signed it.

32. **Attorneys' Fees.** Should proceedings be brought to enforce or interpret any of the terms of this Conservation Easement, the prevailing Party in any such proceedings shall be entitled to recover from the non-prevailing Party its costs, including reasonable attorneys' and experts' fees.

33. **Permission.** Whenever permission, consent or approval (“permission”) is required pursuant to this Conservation Easement, such permission shall be obtained in advance and in writing signed by the Party from whom permission is to be obtained. Whether permission should be granted or denied shall be determined based upon the purposes of this Conservation Easement, and shall not be unreasonably withheld, unless consent or permission is specified in the Conservation Easement as being within the sole discretion of a Party.

34. **Exhibits.** The exhibits attached hereto are incorporated herein by this reference:

Exhibit A: Ranch Legal Description
Exhibit B: OSSV Easement Area Legal Description
Exhibit C: OSSV Easement Area Map
Exhibit D: Julia Morgan Plans
Exhibit E: Interim Management Criteria
Exhibit F: Access Parameters

[Review Note: Additional exhibit maps may be needed to illustrate elements of the requirements for the Public Access Plan.]

35. **Effective Date.** This Conservation Easement is effective as of the date of recordation in the Official Records of the County of San Luis Obispo, California.

Agreed to and executed by:

HEARST HOLDINGS, INC.,
GRANTOR:

By: _____
Stephen T. Hearst
Vice President and General Manager
San Simeon Ranch Division

Date

AMERICAN LAND CONSERVANCY,
GRANTEE:

By: _____
Harriet Burgess
President

Date

[Add notary acknowledgments]